

State Board of Equalization

OPERATIONS MEMO

For Public Release

No. : 1188

Date : May 16, 2013

SUBJECT: Top 500 – List of Largest Sales and Use Tax Delinquencies on BOE's Website

I. GENERAL

Background

Assembly Bill (AB) 1424 (Chapter 455, Statutes 2011) operative January 1, 2012, requires the Board of Equalization (BOE) to increase its public list of the largest sales and use tax delinquencies from 250 (Top 250) to 500 (Top 500). Revenue and Taxation Code section 7063, as amended by this bill, directs the BOE to make public each quarter a list of the 500 largest sales and use tax delinquencies (liabilities) in excess of one hundred thousand dollars (\$100,000) on the BOE's website.

Effective July 1, 2012, state governmental licensing entities that issue professional or occupational licenses, certificates, registrations, or permits, are required to suspend, revoke, and refuse to issue a license if the applicant's or licensee's name is included on the list of the 500 largest sales and use tax delinquencies. However, the Department of Motor Vehicles (DMV), the State Bar of California and the Alcoholic Beverage Control Board (ABC) are not mandated, but at their discretion, may participate with the application of this section of the law. AB 1424 does not include the State License Contractor's Board in its definition of "governmental licensing entity." AB 1424 also prohibits a state governmental agency from entering into any contract for the acquisition of goods or services with a contractor whose name appears on the Top 500 largest delinquency list (Top 500 list).

For purposes of compiling the Top 500 list, a liability means an amount owed to the BOE that meets all of the following criteria. The liability must be:

- A. Based on a determination made under Article 2 (commencing with section 6481) or Article 3 (commencing with section 6511) of Chapter 5 deemed final pursuant to Article 5 (commencing with section 6561) of Chapter 5, or that is "due and payable" under Article 4 (commencing with section 6536) of Chapter 5 or self-assessed by the taxpayer;
- B. Recorded as a notice of state tax lien pursuant to Chapter 14 (commencing with section 7150) of Division 7 of Title 1 of the Government Code, in any county recorder's office in this state; and
- C. For an amount of tax delinquent for more than 90 days.

For purpose of this list, a liability does not include any of the following, and, therefore, may not be included on the Top 500 list:

- A. A liability that is under litigation in a court of law;
- B. A liability for which payment arrangements have been agreed to by both the taxpayer and the BOE and the taxpayer is in compliance with the arrangement; and
- C. A liability for which the taxpayer has filed for bankruptcy protection pursuant to Title 11 of the United States Code, and the bankruptcy case is still pending.

Each quarter the list of the Top 500, with respect to each liability, will include all of the following:

- A. The names of the person(s) liable for payment of the tax and their last known address;
- B. The amount of the liability as shown on the notice or notices of state tax lien including any applicable interest or penalties, less any amounts paid;
- C. The earliest date that a notice of state tax lien was filed;
- D. The type of tax that is delinquent.
- E. The telephone number and address of Compliance Program Analysis Section (CPAS) located in Headquarters, for taxpayers to contact if they believe their name was included on the list in error;
- F. The aggregate number of persons that have appeared on the list who have satisfied their liability in their entirety and the dollar amounts, in the aggregate, that have been paid related to the liabilities that have appeared on the list; and
- G. Any payments made toward liabilities on the list if requested by the taxpayer.

Process

Thirty (30) days prior to making a liability a matter of public record on its website, the BOE will send a preliminary written notice (BOE-1401, *Possible Public Disclosure of Tax Delinquency*) by certified mail, return receipt requested to each person or persons liable for the payment of tax. The notice will advise each person(s) of the BOE's intent to place their name on the list and the basis for the action.

CPAS will use the Automated Compliance Management System (ACMS) to send the BOE-1401 notices, which will include the responsible collector's name and contact information. The notice will provide warning to the person(s) (taxpayers) that if their name is included on the list, it may lead to the loss or denial of their professional or occupational licenses, including driver licenses, pursuant to Business and Professions Code (BPC) section 494.5, and prevent them from entering into contracts for the acquisition of goods or services with California state agencies as noted in Public Contract Code section 10295.4. If within 30 days after the issuance of the notice, the person(s) does not remit the amount due, or make arrangements with the BOE for payment of the amount due, the delinquent amount shall be included on the list.

Once the tax delinquencies are published, the BOE will provide the state governmental licensing agencies, via Secure File Transfer, a "Certified List" of the Top 500 largest sales and use tax delinquencies for purposes of administering section 494.5 of the BPC. These agencies shall refuse to issue, reactivate, reinstate, or renew a license and shall suspend a license if a licensee's (our taxpayer) name is included on the "Certified List."

Each state licensing agency shall determine whether an applicant or licensee is on the "Certified List." If applicants or licensees are listed, the licensing agency shall then deliver, within 30 days of receipt of the list, a preliminary notice to the applicants or licensees stating the intent to suspend or withhold issuance or renewal of their licenses. The notice will include CPAS' address, a telephone number for immediate contact, and the *License Suspension Release* form (provided by the state agency suspending the license) to be completed by licensees addressed to CPAS in the event the licensees wish to challenge the submission of their names on the "Certified List."

Taxpayers challenging the submission of their names on the list will complete the form and make a timely written request (explained below) for release to CPAS. The criteria for release are:

- A. The applicant or licensee has complied with the tax obligation, by either payment of the unpaid taxes or entry into an installment payment agreement;
- B. The applicant or licensee has submitted a request for release not later than 45 days after the applicant's or licensee's receipt of the state licensing agency's preliminary notice; or
- C. The applicant or licensee is unable to pay the outstanding tax obligation due to a current financial hardship. Hardship requests will be considered on a case by case basis.

The BOE must remove the taxpayer's name from the Top 500 list no later than five business days from the occurrence of any of the following:

- A. The person liable for the tax has contacted the BOE and entered into an installment payment agreement to satisfy the liability. However, if the person fails to comply with the payment agreement after having their name removed from the list, the BOE shall add that person's name to the list without providing him or her with an additional written notice;
- B. The BOE has verified that an active bankruptcy proceeding has been initiated for the liability;
- C. The BOE has verified that a bankruptcy proceeding has been completed and there are no assets available with which to pay the delinquent amount or amounts; or
- D. The Special Operations Branch (SOB) has approved the liability for write-off.

II. HEADQUARTERS RESPONSIBILITY

Compliance Program Analysis Section (CPAS)

Each quarter, CPAS will:

- A. Coordinate with the Technology Services Department (TSD) to extract a list of candidates that may qualify for the Top 500 list from ACMS, based on the required criteria stipulated above. The list will be sent to district offices and Centralized Collection Section (CCS) to determine if all the criteria have been met for inclusion on the list;
- B. Consult with the Offer-In-Compromise (OIC) Section or SOB as appropriate for accounts being reviewed for an OIC or write-off to determine if the accounts should be placed on the list;
- C. Post the Top 500 Tax Delinquencies on the BOE's website once the accounts have been certified by the district offices and CCS;
- D. Provide state governmental licensing agencies with the quarterly "Certified List" of the Top 500 largest sales and use tax delinquencies pursuant to section 7063 for purposes of administering section 494.5 of the BPC, and act as a point of contact with state licensing agencies, licensees, district offices and CCS to facilitate tax resolutions;
- E. Receive "License Suspension Release" requests from taxpayers wishing to challenge their placement on the Top 500 tax delinquency list and distribute them to the district offices and CCS for processing of tax payment arrangements; and
- F. Notify licensees on the outcome of their Licenses Suspension Release requests. Copies of these responses will be mailed to state governmental licensing agencies related to the licensee. The BOE will respond within 45 days from the date CPAS received the License Suspension Release request. In the event the BOE is unable to complete the release review within 45 days after receipt of the licensee's request for release, the release should be granted and the BOE shall notify the licensing agency to reinstate the applicable license with retroactive effect back to the date of the erroneous suspension, and the suspension shall not be reflected on any licensee's record.

Special Operations Branch (SOB)

Once an account on the list has received final approval by SOB for write-off, SOB shall immediately notify CPAS, so that the account may be removed from the list.

III. DISTRICT OFFICES/CCS RESPONSIBILITY

To determine the potential liabilities to be placed on the Top 500 quarterly list, each district office and CCS will receive a list of potential candidates for review. The list includes accounts for which the respective district office or CCS is responsible for performing collection activity. Once the district office or CCS has determined whether all the criteria has been met for inclusion on the list, the district office or CCS administrator will return the list via email to the CPAS shared group email address (SUTDCPAS@boe.ca.gov) certifying which accounts on the list qualify for posting on the Top 500 website. As used below, the term "qualifying liabilities" means individual differences that solely, or in combination, cause the account to qualify for listing on the website. The district offices or CCS must ensure that:

- A. The qualifying liabilities have been final for more than 90 days;

- B. The BOE has recorded a notice of state tax lien for the qualifying liabilities in a California county recorder's office;
- C. The current delinquency amount due for the qualifying liabilities is in excess of \$100,000;
- D. The qualifying liabilities are not under litigation in a court of law;
- E. The qualifying liabilities are not in the appeals process. For the purpose of this process, if all of the tax liability, with the exception of the penalty and interest, has been paid and a refund request has been submitted, we will consider this as an appeal;
- F. The taxpayer is not in bankruptcy status;
- G. The account is not on a payment plan;
- H. The mailing address is up to date by checking the Employment Development Department, DMV, FTB, Lexis-Nexis/Accurint and/or other available search tools;
- I. For partnerships, husband-wife co-ownerships, and registered domestic partnerships, ensure that all listed taxpayers are liable for the qualifying liabilities. If individual partners are liable for lesser amounts, specify those amounts on the list. If all partners are liable for the full amount, no special notation will be required;
- J. For taxpayers whose liabilities were discharged in bankruptcy, ensure that existing liens attached to real property prior to the filing of the bankruptcy. If the liens did not attach to any real property, then the accounts should not be listed;
- K. The accounts have not been written off. An account is considered written off when it has been approved by all required levels within SOB;
- L. Review taxpayers "License Suspension Release" requests received by CPAS and determine if taxpayers qualify for the license suspension release by agreeing to pay the liability in full or by entering into reasonable installment payment agreements. Once taxpayers agree to either form of payment, district offices or CCS should notify the taxpayer of the agreement using current acceptance documents. There may be instances where taxpayers will send their release requests directly to the district offices or CCS instead of CPAS. In this case, the district offices or CCS should begin working the account and immediately send a copy of the Release Request via email (PDF) to CPAS or fax a copy to CPAS at 916-323-8344; and
- M. Immediately notify CPAS of the outcome of the License Suspension Release review so that state licensing agencies can be informed whether or not to release the license suspension.


The district offices and CCS will continue to be responsible for collection of accounts posted on the Top 500 list. Returned mail updates will be sent from CPAS to the responsible district office or CCS to determine if a better address exists by using skip tracing tools such as DMV, FTB and Lexis-Nexis/Accurint, etc. If a better address is found, the address should be updated in IRIS and ACMS. The information should also be relayed to CPAS who will then generate a new letter from ACMS and mail it to the taxpayer. CPAS will ensure that the account is not posted to the list if the BOE-1401 letter is generated less than 30 days from the next list update. Returned

mail labeled as *unclaimed* and or *refused* need not be further researched and will be included on the list.

Once an account has been posted on the Top 500 list, it should be closely monitored for any changes that would require it to be removed from the list. CPAS must be contacted immediately by phone at (916) 323-8624 or email if it is necessary to remove an account from the list. AB 1424 requires that the taxpayer's name must be removed from the list within five business days after the BOE is notified of an action that disqualifies it from placement on the list.

IV. OBSOLESCENCE

The issuance of this operations memo renders Operations Memo 1144, *Website List of 250 Largest Sales and Use Tax Delinquencies*, obsolete. This operations memo will also become obsolete when the information it contains is incorporated in chapter 7 of the Compliance Policy and Procedures Manual.

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Jeffrey L. McGuire, Deputy Director
Sales and Use Department

Distribution 1-D